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MOTION FILED JUN 27 1958

IN THE

Supreme Court of the United States

October Term, 1957

No. 892

GUNNLEIK BERGE,

Petitioner,

AGAINST

NATIONAL BULK CARRIERS, INC.
and TODD SHIPYARDS CORP.,

Respondents.

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING AND PETITION

FRANK REISS,
Attorney for Petitioner,
No. 20 Vesey Street,
New York City.

JACK STEINMAN,
HARRY H. LIPSIG,
on Petition.

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GUNNLEIK BERGE,

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AGAINST

NATIONAL BULK CARRIERS, INC. and TODD SHIPYARDS CORP.,

Respondents.

Motion for Leave to File Petition for Rehearing of Order Denying Petition for Writ of Certiorari

Petitioner Gunnleik Berge respectfully moves for leave to file the annexed petition for rehearing of the order of this Court denying the petition for writ of certiorari in this case, entered on May 19, 1958.

Rehearing is sought at this time because, as is more fully discussed in the annexed petition, a decision was entered shortly thereafter, and on June 9, 1958, in the case of *Halecki* v. *United New York and New Jersey Sandy Hook Pilots Association*, granting a petition for writ of certiorari. This latter case involves the same question as that presented herein.

Although this petition for rehearing is filed after the expiration of the time prescribed in Rule 58, the grounds

upon which it is based arose after the entry of the order herein; and this Honorable Court has the power, in its discretion to entertain the petition. *Roberts Sash & Door Co.* v. *U. S.*, 282 U. S. 829; *Duquesne Steel Foundry Co.* v. *Burnet*, 282 U. S. 830; *Douglas* v. *Willcuts*, 295 U. S. 722; *Silesian American Corp.* v. *Clark*, 332 U. S. 469; see also *U. S.* v. *Ohio Power Co.*, 353 U. S. 98.

FRANK REISS
Counsel for Petitioner

Dated: New York, N. Y.
June 26, 1958.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 892

GUNNLEIK BERGE,

Petitioner,

AGAINST

NATIONAL BULK CARRIERS, INC. and TODD SHIPYARDS CORP.,

Respondents.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner GUNNLEIK BERGE prays that this Court grant rehearing of its order of May 19, 1958, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Second Circuit in the above-entitled case as prayed for in the petition originally filed herein.

Reasons for Granting Rehearing and Issuing the Writ

At the time the petition herein was filed, and indeed at the present time, there does not appear to be any controlling decision of this Honorable Court explicitly deciding the legal issues presented in the case at bar, involving the scope of the warranty of seaworthiness,

particularly as to the classes of persons entitled to invoke that doctrine.

The instant case was decided on January 10th, 1958 by the United States Court of Appeals for the Second Circuit on the very same day as the same Court decided the case of *Halecki* v. *United New York and New Jersey Sandy Hook Pilots Association*, which latter case bears number 955 of the October 1957 term of this Honorable Court.

The fact that both cases involve the same question of law is evident not only from the fact that the decisions of the Court of Appeals for the Second Circuit were handed down simultaneously, but also from the fact that the opinion in each case refers to the opinion in the other and affects the other.

Petitions for writ of certiorari were filed in both cases. The petition for writ of certiorari herein was denied on May 19, 1958; the petition in the *Halecki* case, *supra*, was granted on June 9, 1958.

The importance of the question presented continues to be as great and to affect as many significant interests as when the petition herein was originally filed.

Although the within petition is not filed within the time prescribed by the applicable rules of this Honorable Court, it is apparent from the foregoing that the within petition is based upon circumstances of substantial effect which occurred after the petition was originally filed. This circumstance was directly adverted to by this Honorable Court in the case of the *U. S.* v. *Ohio Power Co.*, 353 U. S. 98 where the Court said at page 99:

> "We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules".

The importance of consistent disposition of cases involving the same question and the need for uniformity in the application of the principles recognized by this Honorable Court, indicate that this petition for rehearing should be granted to insure that no conflict should arise, particularly between cases decided within so short a time of each other. See *U. S.* v. *Ohio Power Co.*, 353 U. S. 98, *supra.*

CONCLUSION

For the reasons above set forth and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Second Circuit.

Dated, N. Y., N. Y.,
June 1958

Respectfully submitted,

FRANK REISS,
Counsel for Petitioner.

JACK STEINMAN,
HARRY H. LIPSIG,
On Petition.

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 and the applicable rules of this Court.

FRANK REISS,
Counsel for Petitioner.